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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED CEREBRAL PALSY  
11 ASSOCIATION, INC.,

12 Plaintiff,

13 v.

14 PHOENIX INSURANCE COMPANY AND  
15 TRAVELERS INDEMNITY COMPANY,

16 Defendants.

No. C04-2491Z

MINUTE ORDER

17  
18 The following Minute Order is made by direction of the Court, the Honorable Thomas  
S. Zilly, United States District Judge:

19 (1) The Court heard oral argument on September 14, 2005, on Plaintiff's Motion  
20 for Summary Judgment, docket no. 20. The Court granted and denied the motion in part for  
21 the reasons stated on the record. The Court also deferred a ruling on the issue of whether, as  
22 a matter of law, Defendants acted in bad faith. The Court now DENIES the Plaintiff's  
23 motion, docket no. 20, on the issue of bad faith. There are material issues of fact that remain  
24 as to whether Defendants' breach of the duty to defend and indemnify was "unreasonable,  
frivolous, or unfounded." See Holly Mountain Resources, Ltd. v. Westport Insurance Corp.,  
104 P.3d 725, 733 (Wash. Ct. App. 2005). Contrary to Plaintiff's contention, Truck  
Insurance Exchange v. Vanport Homes, Inc., 147 Wn.2d 751 (2004), does not stand for the  
proposition that because this Court has found a duty to defend and indemnify, an insurer is  
liable for damages for the tort of bad faith.

(2) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Filed and entered this 15th day of September, 2005.

BRUCE RIFKIN, Clerk

s/ Casey Condon

By Casey Condon  
Deputy Clerk